IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14328 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PUSHPAK INDUSTRIAL ESTATE CO-OPERATIVE SOCI.LTD. - Petitioner

Versus

TORRENT POWER AEC LTD. & 1 - Respondents

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Appearance :

MR PP KASVALA for Petitioner.
NOTICE NOT RECD BACK for Respondent : 1.
MR RM CHHAYA for Respondent. 2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 17/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Rule. Mr.R.M.Chhaya, learned counsel waives service of notice on behalf of the respondent No.2. The record indicates that though the respondent No.1 is duly served with notice for final disposal of the petition, it has neither appeared through its Lawyer, nor through its constituted agent, nor has filed affidavit-in-reply controverting the averments made in the petition.

2. By filing this petition under Article 226 of the Constitution, the petitioner i.e. Pankajbhai Amaratlal Chokshi, who is Chairman of Pushpak Industrial Estate Cooperative Society Limited situated at Plot No.123, 123-A, GIDC, Phase No.I, Vatva, Ahmedabad, has prayed to issue a writ of mandamus, or any other appropriate writ or order directing the respondent No.1 i.e. Torrent Power AEC Ltd., to supply electricity connection to 28 Industrial Shades constructed by the petitioner, on usual terms and conditions.

3. The record shows that land bearing Plot Nos.123 & 123-A, G.I.D.C. Phase-I, Vatva, Ahmedabad, belonged

to Nirav D.Patel, who had purchased the said property at an auction sale held by the High Court in a winding up petition. The owner i.e. Nirav D.Patel wanted to develop the land purchased by him. Therefore, he applied to the Ahmedabad Municipal Corporation to permit him to develop the land. The Ahmedaba Municipal Corporation by two different Commencement-Letters dated October 26, 2005 and February 21, 2006 respectively permitted him to develop the land belonging to him, which is quite evident from the Commencement-Letters produced by the petitioner at ANNEXURE-B to the petition. Pushpak Industrial Estate Cooperative Society Limited is nominee of Nirav D.Patel, who is owner of the land. Pursuant to two Commencement-Letters, the petitioner has constructed 28 industrial Sheds. After construction of the Industrial Sheds was over, it was obligatory for the petitioner to obtain Building Use Permission and thereafter to apply to the respondent No.1 for supply of electricity connection to the Sheds constructed by him. However, without obtaining Building Use Permission, the petitioner approached the respondent No.1 and requested the respondent

No.1 to supply electricity connection to the Sheds constructed by him. The said request has been turned down by the respondent No.1, which is quite evident from the contents of letter dated July 18, 2006 addressed by the General Manager, Customer Services to the petitioner, a copy of which is produced at Annexure-A to the petition. By the said communication, the petitioner has been called upon to produce either Building Use Permission or conditional order of the High Court to enable the respondent No.1 to supply electricity connection to 28 Sheds constructed by the petitioner. Under the circumstances, the petitioner has filed the instant petition and claimed relief to which reference is made earlier.

4. This petition was placed for admission hearing before the Court on July 21, 2006, and after hearing the learned counsel for the petitioner, notice for final disposal of the petition was issued making it returnable today. As noticed earlier, the respondent No.1 is duly served, but, it has neither appeared before the Court nor contested the petition.

5. This Court has heard Mr.P.P.Kasvala, learned counsel for the petitioner and Mr.R.M.Chhaya, learned counsel for the respondent No.2. Having regard to the facts of the case, this Court is of the opinion that interest of justice would be served if following directions are issued:

(1) The petitioner will approach the Ahmedabad Municipal Corporation for obtaining Building Use Permission within thirty days from today with a proper application/form/format and by paying requisite fee, if any.

(2) The Ahmedabad Municipal Corporation is directed to take decision on the application, which may be submitted by the petitioner, within four months from the date of receipt of the same.

(3) The petitioner shall apply to the respondent No.1., i.e. Torrent Power AEC Limited, for providing electricity connection to 28 Industrial Sheds constructed by it with a

proper application/form/format and by paying charges within a week.

(4) The respondent No.1, i.e. Torrent Power AEC Limited, is directed to provide electricity connection to 28 Industrial Sheds constructed by the petitioner within one month on usual terms and conditions.

(5) In case the Ahmedabad Municipal Corporation is not approached by the petitioner for obtaining Building Use Permission within the period stipulated in this order, the Ahmedabad Municipal Corporation shall inform the Torrent Power AEC Limited to disconnect the electricity supply made available to 28 Industrial Sheds constructed by the petitioner and in such an eventuality, it would be open to the Torrent Power AEC Limited to disconnect the electricity supply provided to the 28 Industrial Sheds constructed by the petitioner within a period of fifteen days.

(6) In case the Ahmedabad Municipal Corporation does not grant Building Use Permission, it will ask the Torrent Power AEC Limited to disconnect the electricity supply provided to 28 Industrial Sheds constructed by the petitioner within a period of fifteen days and, thereupon, it would be open to the Torrent Power AEC Limited to disconnect the electricity supply provided to 28 Industrial Sheds constructed by the petitioner.

(7) The petitioner shall file an Undertaking before the Torrent Power AEC Limited to the effect that in the event the Building Use Permission is not granted by the Ahmedabad Municipal Corporation, the petitioner will have no objection to disconnection of electricity supply provided to 28 Industrial Sheds constructed by it. This Undertaking shall be filed along with the application/form/format meant for the purpose.

Rule is made absolute subject to above referred to directions. There shall be no order as to costs. Direct Service is permitted.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

(patel)